

Concurrence of the Position of a Governing Body and Statutory Authorization in Limited Companies and Cooperative in a Comparative Context

Abstract

The thesis provides an analysis of function concurrence between board members and employees to the extent of board members in companies limited by shares and in a society. The aim of this thesis is to describe the relative issues, problematic and controversial aspects of current doctrine and propose possible solutions, which could be acceptable for legal theory as well as for legal practice. The work is divided into three main parts. The first part deals with the validity of employment contract in case of concurrence of functions. The second part then describes the issue of company representation in case of concurrence of functions. The last part describes the relative issues, which are common to both previous sections. The first part deals mainly with the current legal regulation of the employment contract in case of concurrence of functions. Not long ago, the employment contract was held as invalid by case law; however a recent legislation has brought some reasonable changes and has explicitly declared the validity of the employment contract. Nevertheless, this has produced also some new issues, especially in the case of conflicts between the employment contract conditions and the business contract conditions. In this respect, the thesis describes specific issues and attempts to propose possible solutions for practice, or at least to draw attention to potential difficulties. In contrast, the second part of the thesis describes the historical as well as recent developments of the issue of company representation. For this consideration, relevant legal principles and case-law are analyzed. Comparisons of opposing legal theories of different authorities are made, with the attempt to find possible solutions of the current status which seems to be not satisfactory for legal practice. The remaining chapters are common to both preceding parts and determine the key areas related to the concurrence of functions. Specific institutes of Company Law in English Legal System, which has similar rules for the concurrence of functions, are described, showing, however, that these do not cause significant legal issues in practice. This part also includes a relative view of the European Court of Justice, which applies the employment protection rules also to the members of a board of a company. Finally, the last chapter summarizes new statutory regulation of Czech civil law and its interpretation of the concurrence of functions.

Key Words:

Concurrence of function, board member, employee, representation of company